

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 235 of 1982

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

HARISINGH G BHATTI

Appearance:

1. Second Appeal No. 235 of 1982
MR DIPEN DESAI, A.G.P., for Petitioner No. 1
MR MD RANA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/04/2004

ORAL JUDGEMENT

1. The respondent was serving in S.R.P Group III at
Vadodara. He was promoted as Company Commander.

However, he was suspended on 25.04.1968 and he was dismissed from service from 31.01.1972 after a departmental inquiry.

2. On 01.09.1976, he filed a civil suit for declaration that the order dated 23.07.1968 reducing him from the post of Company Commander, the order of suspension dated 26.04.1968 and the order of dismissal dated 31.01.1972 was void and that he continued as Company Commander. The suit was resisted by the appellant contending, inter alia, that it was barred by limitation.

3. Learned Civil Judge (Senior Division), Gondal who tried the suit held that the order dated 23.07.1968 reducing the plaintiff from the post of Sub-Inspector was void and the order of dismissal was also null and void as it violated Article 311(2) of the Constitution of India on the issue of limitation. He observed that the period of limitation for filing the suit was three years. However, he went on to hold that when the entire order of dismissal was held to be void, it had no legal existence and such order of dismissal didn't need to be set aside and hence the suit was not barred by limitation.

4. In view of these findings, the learned Judge decreed the suit in favour of the respondent-plaintiff declaring that the order reducing the plaintiff from the post of Company Commander and his order of dismissal were null and void and he continued as Company Commander with all the benefits of pay and allowances.

5. The deponent's appeal was dismissed by the learned Extra Assistant Judge, Rajkot.

6. The appellant has, therefore, filed this Second Appeal under Section 100 of the Civil Procedure Code.

7. At the time of admission, the following substantial question of law were formulated for decision;

(1) Whether the order of IGP, Mr Paveri, to continue the inquiry cannot amount to the inquiry being conducted under his order?

(2) Whether the learned Assistant Judge could, at law, embark on fact finding inquiry?

8. The learned A.G.P who appears for the appellant however submitted that the real question involved in the present litigation is whether the suit was barred by

limitation and the said question is a substantial question of law that needs to be raised. I find substance in his contention since prima facie the suit was filed after a period of more than three years from the date of his reversion and date of dismissal. Hence I raise the additional substantial question of law as follows:

Whether the Courts below had held that the suit was not barred by limitation since the orders were found to be null and void?

9. The said question is no longer res integra. The learned Trial Judge erred in holding that, when the orders are found to be null and void, the suit cannot be held to be barred by limitation relying upon the decision of the Supreme Court in the case of STATE OF MP Vs. SYED QAMARALI, (1967) 1 SLR 228. However, the Supreme Court in STATE OF PUNJAB AND ORS Vs. GURDEV SINGH, (1991) 4 S.C.C. 1 distinguished the said decision and held that the suit for declaration that order of dismissal from service of an employee was ultra vires, unconstitutional, against the principles of natural justice and void and that he continues to be in service was subject to limitation period prescribed under Article 113. The limitation period of three years starts running from the date of passing the dismissal order or when departmental appeal/revision filed, from the date of dismissal of such appeal/revision, and if the suit is filed after lapse of three years' period so computed it would be liable to be dismissed on ground of bar of limitation. The same view was taken by the Supreme Court in UNION OF INIDA AND ORS Vs NANDLAL RAIGAR, (1996) 4 SCC 459 and in the case of VASANT RAMCHAND DESHPANDE Vs STATE OF MAHARASHTRA AND ORS, (1997) 11 SCC 305. In the present case, the respondent-plaintiff challenged the legality and validity of two orders, namely, the order of reversion dated 23.07.1962 and the order of dismissal dated 31.01.1972. Thus, it was filed after a lapse of three years period computed from the date of the orders, which were challenged. The suit is, therefore, liable to be dismissed on the ground of bar of limitation in view of the decision of the Supreme Court cited above.

10. The appeal is, therefore, allowed. The suit filed by the respondent-plaintiff is ordered to be dismissed. No order as to costs.

(M.C. PATEL, J.)

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